

AQ 256

Toxic Air Pollutant Program Revision

LAC 33:III.221,223,551

confirmed by the authority. The assistant executive directors shall serve as the principal assistants to the executive director. He/She shall be responsible to the executive director, and the deputy executive director in the absence of the executive director, for the effective performance of all duties assigned by the executive director, in accordance with the policies, rules, regulations, directives and memoranda issued by the executive director and the authority.

E. Delegation of Authority

1. In the absence of the executive director, the deputy executive director, as delegated by the executive director during his/her absences, will assume the duties of the executive director.

2. In the event both the executive director and the deputy executive director are absent, the executive director will appoint an incumbent of the assistant executive director positions to assume the duties of the executive director.

F. Directors of Divisions

1. There shall be a director for each division of the Office of Student Financial Assistance, appointed by the executive director in accordance with State Civil Service laws, rules and regulations.

2. Under the direction and authority of the executive director, each director shall administer the division for which he/she is appointed.

3. As the administrative head of a division, the director shall be responsible to the executive director for planning, supervising, directing, administering and executing the functions and programs assigned to the division in accordance with all applicable laws, rules, regulations, policies, directives, and budgets.

4. The directors may invite members of his/her administrative staff to aid in his/her presentations to the authority.

G. Recording Secretary. The executive director shall appoint a recording secretary whose duties shall include giving or causing to be given notice of all meetings of the authority and its committees as required by the Administrative Procedure Act or these bylaws, to record and prepare the minutes of all authority meetings and meetings of its committees and to maintain and provide for the safekeeping of all minutes and other official documents of the authority. The recording secretary shall have the authority to provide copies of the official records of the authority as required by the public records laws of the state of Louisiana or as otherwise directed by the authority or the executive director and to certify the authenticity of such records and the signatures of members of the authority, the executive directors or others acting in their official capacity on behalf of the authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3093 et seq.

HISTORICAL NOTE: Promulgated by the Tuition Trust Authority, Office of Student Financial Assistance, LR 23:1656 (December 1997), amended LR 25:1092 (June 1999), LR 33:444 (March 2007), LR 33:2618 (December 2007).

George Badge Eldredge
General Counsel

0712#019

RULE

**Department of Environmental Quality
Office of the Secretary
Legal Affairs Division**

Comprehensive Toxic Air Pollutant
Emission Control Program
(LAC 33:III.211, 223, 551, 5101, 5103,
5105, 5107, 5109, 5111, and 5112)(AQ256)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary has amended the Air regulations, LAC 33:III.211, 223, 551, 5101, 5103, 5105, 5107, 5109, 5111, and 5112 (Log #AQ256).

The air toxics rule has been in effect for 15 years. It currently contains dated language that needs to be removed or modified. Updating the rule also addresses requests from industry to streamline the rule. This rule revises the air toxics rule in the following ways: eliminates obsolete rule language and most rule language concerning compliance plans and certifications of compliance; removes obsolete department requirements; clarifies area (minor) and major source requirements; utilizes applicable federal Maximum Achievable Control Technology (MACT) rules (40 CFR Part 63) for state MACT; eliminates the exemption for electric steam generating units; exempts virgin fossil fuels gas streams not containing TAPS at chemical plants; moves discharge reporting requirements to LAC 33:I.Chapter 39; advances the submittal of the Toxic Emissions Data Inventory (TEDI) reports to not later than March 31 of each year; exempts area (minor) sources from submitting TEDI reports; and revises public notice requirements.

The department made substantive changes to address comments received during the public comment period of proposed rule AQ256. In LAC 33:III.223, Note 13 to Table 2 is revised for clarity. The exemption for electrical utility steam generating units is reinstated in LAC 33:III.551 and 5105. The definitions of *potential to emit* and *virgin fossil fuel* have been revised in LAC 33:III.5103. In LAC 33:III.5105, the exemption for the combustion of virgin fossil fuels has been reworded. Revisions for clarity are made in LAC 33:III.5107, 5109, and 5111. A footnote has been added to Table 51.2 in LAC 33:III.5112.

The department made revised substantive changes to address comments received during the public comment period for the substantive changes to the proposed rule, AQ256S. LAC 33:III.5105.B.3.c is revised to provide for the continuing exemption of emissions from the combustion of refinery fuel gas and to clarify that the emissions from the combustion of fuel gas systems are also exempt from the provisions of LAC 33:III.Chapter 51. Also, the discharge reporting requirements in LAC 33:III.5107.B that were deleted in the original proposed rule, AQ256, are reinstated in the regulations.

The basis and rationale for this Rule are to update the Louisiana Ambient Air Quality Standards to ensure continued protection of human health and the environment.

This Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required.

Title 33
ENVIRONMENTAL QUALITY
Part III. Air

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§211. Methodology

A. Formula to Apportion Fees

Air Toxics Permits Application Fee for major sources of toxic pollutants (based on type of facility and on rated production capacity/throughput)	Surcharge of 10% of the permit application fee to be charged when there is an increase in toxic air pollutant emissions above the Minimum Emission Rates (MER) listed in LAC 33:III.5112, Table 51.1
Air Toxics Annual Emissions Fee for major sources of toxic air pollutants (based on air toxic pollutants emitted) ¹	Variable
Annual Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Variable
New Application Fee (based on type of facility and on rated production capacity/throughput)	Variable
Major and Minor Modification Modified Permit Fee (based on type of facility and on rated production capacity/throughput)	Variable
PSD Application Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 50% of the application fee when a PSD permit application is being processed
"NESHAP" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the Annual Maintenance Fee for that particular process/plant to be added to the Annual Maintenance Fee
"NSPS" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the permit application fee to be charged for any permit application that includes the addition of new equipment subject to NSPS regulation
¹ Fees shall be assessed on major sources as defined in LAC 33:III.5103. Sources that have reduced emissions below major source thresholds are not required to submit annual emissions reports in accordance with LAC 33:III.5107.	

B. - B.13.e. ...

14. Air Toxics Annual Emissions Fees based on actual annual emissions that occurred during the previous calendar year shall be assessed on *major sources* as defined in LAC 33:III.5103.

15. - 15.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), LR 18:706 (July 1992), LR 19:1419 (November 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 26:2444 (November 2000), LR 29:2776 (December 2003), amended by the Office of the

Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:2082 (October 2007), LR 33:2620 (December 2007).

§223. Fee Schedule Listing

Table 1. - Table 2, Note 12. ...

Note 13. Fees will be determined by aggregating and rounding (e.g., parts of a ton less than 0.50 are invoiced as zero and parts of a ton equal to or greater than 0.50 are invoiced as one ton) actual annual emissions of each class of toxic air pollutants (as delineated in the tables in LAC 33:III.5112) for a facility and applying the appropriate fee schedule for that class. If a facility emits more than 4000 tons per year of any single toxic air pollutant, fees shall be assessed on only the first 4000 tons. In no case shall the fee for this category be less than \$132.

Note 14. - Note 20. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054, 2341, and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1496, 1499 (November 1997), LR 23:1662 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:267 (February 2000), LR 26:485 (March 2000), LR 26:1606 (August 2000), repromulgated LR 27:192 (February 2001), amended LR 29:672 (May 2003), LR 29:2042 (October 2003), LR 30:1475 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2620 (December 2007).

Chapter 5. Permit Procedures

§551. Hazardous Air Pollutant (HAP) Control

Technology Requirements for New Sources

A. - B. Similar Source. ...

C. Exemptions and Prohibitions. The requirements of this Section do not apply to:

1. *electric utility steam generating units*, as defined in LAC 33:III.5103.A;
2. *stationary sources* that are within a source category that has been deleted from the source category list in accordance with Section 112(c)(9) of the Clean Air Act; and
3. *research and development activities*, as defined in Subsection B of this Section.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:913 (May 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:2620 (December 2007).

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter A. Applicability, Definitions, and General Provisions

§5101. Applicability

A. The provisions of this Subchapter and LAC 33:III.905 apply to the owner or operator of any *major source*, as defined in LAC 33:III.5103, unless exempted under LAC 33:III.5105.B.

**Comment Summary Response & Concise Statement – AQ256
Amendments to the Air Regulations
Comprehensive Toxic Air Pollutant Emission Control Program
LAC 33:III.221, 223, 551, 5101, 5103, 5105, 5107, 5109, 5111, and 5112**

Concise Statement arguments:

FOR: [The reason supporting WHY the suggestion in the comment should be adopted by DEQ.
Usually this is the commenter's perspective.]

AGAINST: [The reason WHY the department feels the suggestion should NOT be adopted.]

~~COMMENT 1: — The department's willingness to revisit and modernize the Chapter 51 toxic air pollutant program is appreciated.~~

~~FOR/AGAINST -- No arguments necessary; comment does not suggest amendment or change.~~

~~RESPONSE 1: — The department appreciates the support.~~

~~COMMENT 2: — The proposed rule makes significant progress towards closing the philosophical gap between the Chapter 51 approach to emission control and the federal approach.~~

~~FOR/AGAINST -- No arguments necessary; comment does not suggest amendment or change.~~

~~RESPONSE 2: — The department appreciates the support.~~

~~COMMENT 3: §5103.Definition of *source category* — The commenters support the proposed definition of *source category*.~~

~~FOR/AGAINST -- No arguments necessary; comment does not suggest amendment or change.~~

~~RESPONSE 3: §5103.Definition of *source category* — The department appreciates the support.~~

COMMENT 4: §5107.B — The changes to this subsection are supported because these changes will streamline the regulations with the release reporting requirements in LAC 33:I.Chapter 39.

FOR/AGAINST -- No arguments necessary; comment does not suggest amendment or change.

RESPONSE 4: §5107.B — The department appreciates the support.

COMMENT 5: §5109.C — The exemption in this subsection for sources already subject to MACT standards established in 40 CFR Part 63 is supported by the commenters. The development of standard operating procedures is not necessary in the state rule due to the similarity and more descriptive requirements of 40 CFR 63, Subpart A.

FOR/AGAINST -- No arguments necessary; comment does not suggest amendment or change.

RESPONSE 5: §5109.C — The department appreciates the support.

COMMENT 6: — Minimum emission rates (MER) should no longer be used as a significance level for determining the applicability of some sections of the Louisiana air quality regulations. The Louisiana R.S. 30:2060 mandated a 50 percent reduction in air toxics emissions from 1987 levels. This goal has been met and Chapter 51 requirements have contributed to this reduction. Initially, minimum emission rates provided a way to determine if maximum achievable control technology (MACT) was applicable and if ambient air modeling was required to demonstrate compliance with the ambient air standard. In addition, minimum emission rates established a threshold above which public notice was required for permit modification. The following are examples in the Louisiana air quality regulations which should be deleted.

- LAC 33:III.501.B.4.ii – exemptions granted by the permitting authority
- LAC 33:III.501.B.5 – Table A (2, 3, 6, 9, 10, and 11) – insignificant activities list
- LAC 33:III.501.B.5 – Table D – insignificant activities based on emission levels
- LAC 33:III.5107.D – public notice provisions

FOR: Minimum emission rates (MERs) have been used inappropriately in some sections of the Louisiana air quality regulations; such as LAC 33:III.501.B.4.ii, 501.B.5, Tables A and D, and 5107.D.

AGAINST: MERs are the most reasonable criteria to use to establish certain cutoffs.

RESPONSE 6: — The department appreciates the comments. However, the comments regarding LAC 33:III.501.B.4.ii and 501.B.5, Tables A and D are outside the scope of this rulemaking.

The comments on LAC 33:5107.D are relevant to this rulemaking. The MERs located in LAC 33:III.5112, Table 51.1 were established using a conservative modeling procedure. Based on the modeling procedure, when a facility's emission of a toxic air pollutant (TAP) is below the MER, offsite impact of that TAP should not occur. Conversely if a facility's emission of a TAP is above the respective MER the certainty of no offsite impact disappears. There is one MER for each toxic air pollutant in Table 51.1 (3 sections).

When a facility either modifies or constructs a source resulting in increased emissions of Class I or II (known, probable, or suspected carcinogens) TAPs, which are greater than the respective MER, it is reasonable to assume an offsite impact may occur. In this situation it is also reasonable to inform the public of possible offsite impact. The public notice provisions of Chapter 51 provide the framework for such notification. The public notice provisions of this proposed rule remain unchanged.

COMMENT 7: — The ambient air standards should be abandoned as a control strategy. Currently the department uses both ambient air standards and technology-based controls. The La. R.S. 30:2060.B requires ambient air concentration standards, emission standards, and/or technical control standards for the control of toxic air pollutants. Clearly one of the three or a combination of the three can be used to control toxic air pollutants (TAPs). It would seem appropriate for the department to follow the federal approach. Hazardous air pollutants are regulated by the U. S. Environmental Protection Agency (EPA), in 40 CFR Part 63, using a technology-based approach. A major component of the federal MACT standards is the requirement for an evaluation of residual risk.

- FOR: Technology-based standards should be used instead of using both technology-based standards and compliance with ambient air standards (AAS). EPA uses technology-based standards.
- AGAINST: Technology-based standards are only one aspect of the process to reduce emissions of TAPs. Compliance with AAS is needed to ensure that the technology-based controls are adequate and effective. The Clean Air Act requires EPA after promulgating technology-based standards to reassess each source category to determine residual risk.
- RESPONSE 7: — Currently Louisiana is one of three states which has adopted ambient air standards for toxic air pollutants. The department has concluded that ambient standards are an integral part of its mission to protect public health. Technology-based control standards alone are inadequate for two main reasons. First, when multiple sources exist within close proximity of each other, pollution levels can present unhealthy air quality even though each individual source is being controlled within limits. The ambient air standards ensure that synergistic effects from multiple sources do not adversely affect public health. Secondly, many emission rates are not accurately measured but are estimated based on calculations. Analysis of ambient monitoring data has demonstrated the likelihood that many of these emission sources are underestimated. The ambient air standards ensure that the evaluation of air quality can be based upon actual measurements and not on estimates. For the reasons stated above, the department chooses to retain the AAS.
- COMMENT 8: — If the department is not willing to abandon the ambient air standards control strategy, then the department should shift emphasis to technology or emission-based standards and use the ambient air standards for evaluation of results obtained from ambient monitoring activities as required by La. R.S. 30:2060.F. Monitoring activities showing ambient concentrations above the AAS could be used as a trigger to investigate potential sources and gather additional data.
- FOR: Technology-based standards should be used primarily and AAS could be used to identify a potential problem.
- AGAINST: Technology-based standards are only one aspect of the process to reduce emissions of TAPs. Compliance with AAS is needed to

ensure that the technology-based controls are adequate and effective.

RESPONSE 8: — The department cannot support this comment for the same reasons presented in comment 7. Compliance with both technology-based standards and AAS will continue to be in the rule. The department is unwilling to risk unhealthy exposures to the public while investigating potential problems with AAS exceedances. Using emission-based standards and the AAS should contribute to the protection of the public health.

COMMENT 9: — The department needs to retain the ambient air standards (AAS) that existed prior to January 1, 2002. The proposed rule removes this “historical” information from Table 51.2. Without this information someone performing a historical review could inaccurately conclude that a facility had been in noncompliance. Any mechanism of preserving this historical information could be used by the department.

FOR: The department should maintain historical and replaced values of ambient air standards for possible noncompliance reviews.

AGAINST: Historical, replaced values of AAS should not be maintained.

RESPONSE 9: — The department uses the “Historical Note” which appears at the end of each section of the air quality regulations, to track the history of a regulation. The “Historical Note” is available for anyone conducting a historical review of a facility, and its compliance with Louisiana air quality regulations to ascertain the changes in the regulations over the years. The changes to each section of the air toxics regulation will have a “Historical Note” indicating the date of the change in the regulation.

To provide further historical information, the department proposes to retain information through footnotes to Table 51.2. The ambient air standards were revised in January 2002 and footnotes were used to indicate the ambient air standards that changed. Retaining the previous ambient air quality standards would be confusing for those seeking to comply with the current regulations. A footnote to Table 51.2 will be added that indicates which ambient air standards have been changed and on what date. The footnotes, along with the “Historical Note” should be

sufficient to document the history of the ambient air standards and provide guidance to researchers that previous ambient air standards existed and when.

COMMENT 10: — If the ambient air quality standards are maintained, the department is requested to cease including maximum pound/hour emission limits in air permits. Where there is no correlating regulation, there is no regulatory or legal basis for including a short-term limit. The department should refrain from arbitrarily including such limits in permits, except where specifically requested by the permittee.

FOR/AGAINST -- No arguments necessary since the provision in question is not part of this rulemaking.

RESPONSE 10: — The department appreciates the comment. However, the comment requesting removal of the maximum pound/hour emission limits from air permits is outside the scope of this rulemaking.

COMMENT 11: §5101.A — The department is requested to exempt major sources already subject to a federal maximum achievable control technology (MACT) standard required by Section 112 of the Clean Air Act (CAA). This exemption should be set forth in LAC 33:III.5101.A, not Section 5109. Exempting units already subject to a federal MACT will save time and department resources, and will allow the department to focus on compliance and enforcement of the federal MACT standards (since the department has incorporated by reference federal MACT standards set forth in 40 CFR Part 63). Compliance with federal MACT standards has been used almost exclusively by the regulated community to demonstrate compliance with state MACT. The department is required to review and approve MACT compliance plans for sources subject to LAC 33:III.Chapter 51. Louisiana R.S. 30:2060.N.2 recognizes that federal MACT standards would likely control toxic air pollutant reductions and that the compliance schedule should be the same as the federal compliance schedule. The department would be better suited to ensuring compliance with federal MACT standards than continuing to require duplicative and overlapping state MACT standards. The requested revision is as follows:

§5101. Applicability

A. The provisions of this Subchapter and LAC 33:III.905 apply to the owner or operator of any major source, as defined herein in LAC 33:III.5103, unless exempted under LAC 33:III.5105.B or by Subsection D of this Section.

D. Sources Subject to Federal MACT Standard. Any affected source that is included in a section 112(c) source category or subcategory that is subject to a section 112(d) standard (federal MACT) is not subject to the provisions of this Subchapter. An affected source means the collection of equipment, activities, or both within a single contiguous area and under common control which is further defined by the relevant 112(d) standard. The administrative authority may require controls beyond the provisions of the 112(d) upon demonstration that additional controls are necessary to protect human health or the environment.

FOR: Facilities complying with the Federal MACT standards should be exempted from all aspects of the state air toxic rule to save the department time and resources.

AGAINST: Facilities complying with the Federal MACT standards should not be exempted from all aspects of the state air toxic rule. Requirements to submit annual TAP emission reports, give public notice, and comply with an AAS are necessary to protect human health and/or the environment regardless of the department's resources.

RESPONSE 11: §5101.A — Major aspects of the state's air toxic rule include determining compliance with the AAS, setting emissions standards, maintaining a TAP inventory, publishing public notices, overseeing the reporting of TAP emissions, and issuing air toxics permits. R.S. 30:2060.B requires the department to promulgate rules with AAS and emission standards and/or technical control standards. R.S. 30:2060.E requires the department to compile and maintain a TAP inventory. R.S. 30:2060.H requires the owner or operator of a source to report unauthorized releases of TAPs.

The Federal MACT standards address two portions----emissions standards and/or technical control standards, and reporting requirements, but the reporting requirements differ from the reporting requirements in the proposed LAC 33:III.5107.A.2 and B. Residual risk analysis, which is conducted several years after the promulgation of the MACT rule, addresses an aspect of AAS, but it does not require a source to comply with the state's

promulgated AAS. The MACT rule contains neither public notice requirements nor a requirement to submit TAP inventories.

Therefore the rule as currently proposed requires facilities that comply with a federal MACT rule to comply with LAC 33:III.5109.A and are exempted from §5109.C are required to comply with all other Chapter 51 provisions as in the proposed rulemaking.

COMMENT 12: §5107.A.1.a — The changes to this subparagraph are acceptable as long as the emission inventory enhancement project is fully operational in advance of March 31, 2008. Add the phrase “unless otherwise directed” to this subparagraph to authorize a change in the due date. The added language would then make Chapter 51 reporting language consistent with Subsection 919.D criteria pollutant reporting requirements.

FOR/AGAINST -- The department agrees with the comment; no arguments are necessary.

RESPONSE 12: §5107.A.1.a — Substantive changes will be made to the rule, and flexibility for the toxic emissions data inventory (TEDI) reporting due date will be added at that time.

COMMENT 13: §5103 — The department is encouraged to amend the definition of *virgin fossil fuel* to include all plant-produced streams used as fuel. The definition as it stands refers specifically to refinery fuel gas to the exclusion of chemical plant fuel gas, even though the constituency of chemical plant fuel gas could be identical to refinery fuel gas. By adding an exemption instead of changing the definition, more confusion will result concerning the applicability of Chapter 51 to certain gaseous fuels. Information has been presented to the department that demonstrates that plant-produced fuel gas has similar characteristics and quality to purchased natural gas and should be regulated as such by the department. This would be consistent with EPA’s approach. Based on current and expected future costs associated with energy production, these streams should be treated as valuable products.

FOR/AGAINST -- The department agrees with the comment; no arguments are necessary.

RESPONSE 13: §5103 — The department agrees with the comment that refinery fuel gas and fuel gas with similar characteristics and quality from other sources should be regulated in the same way. The department further believes that the inclusion of 'refinery fuel gas' in the definition of *virgin fossil fuel* is not correct. Consequently, the department will revise the rule with the term 'refinery fuel gas' removed from the definition of *virgin fossil fuel* in LAC 33:III.5103.A and refinery fuel gas regulated under the proposed exemption in LAC 33:III.5105.B. The revised definition of *virgin fossil fuel* will read as follows:

Virgin Fossil Fuel – any solid, refined solid, refined liquid, or, refined or natural gaseous fossil fuel with a BTU content greater than 7,000 BTU/lb that is not blended with reprocessed or recycled fuels. Group 1 *virgin fossil fuels* consist of natural gas, liquid petroleum gas, distillate fuel oil, gasoline, and diesel fuel. Group 2 *virgin fossil fuels* consist of coal, residual fuel oil, and petroleum coke.

Furthermore, the exemption for products of combustion that was proposed in AQ256 (the revision to LAC 33:III.5105.B.3) will be revised to read as follows:

c. gas streams not containing toxic air pollutants that are generated by onsite operations and used as fuel.

COMMENT 14: §5105.B.2 and 3 — The department should state that federal MACT standards shall also be considered MACT standards for the state program which would include combustion source MACT standards because EPA has recently adopted MACT standards for stationary combustion source categories. EPA has also issued national emission standards for hazardous air pollutants (NESHAPs) for significant stationary combustion sources (except stationary diesel engines and electric utility steam generating units addressed separately in Chapter 51) that combust virgin fossil fuels which further negates regulation on a statewide basis.

FOR/AGAINST -- The department agrees with the comment; no arguments are necessary.

RESPONSE 14: §5105.B.2 and 3 — Proposed LAC 33:III.5109.A.2 clearly indicates that compliance with an applicable federal MACT standard is a state MACT. This would be true even when the

state exempts the emission sources as proposed in LAC 33:5105.B.2.

COMMENT 15: §5107 — It is requested that all references to Table 51.3 (Louisiana Toxic Air Pollutants Supplemental List) and the explanatory notes in Section 5112 be removed from the annual reporting requirements of Section 5107. There is no justification for the emissions on the supplemental list to be included in the toxic emissions data inventory (TEDI) report. The footnote to Table 51.3 acknowledges that neither minimum emission rates nor ambient air quality standards have been established for the pollutants set forth on the supplemental list. Also, a significant portion of Chapter 51 does not apply to the supplemental list. This position is supported by the “Louisiana Air Toxics Annual Emissions Report,” dated May of 1995, and the “Background Documentation” for the Louisiana TAP list, dated May 22, 1992. If Table 51.3 is not removed from the annual reporting requirements, then the department is requested to justify its inclusion on the TEDI report.

FOR/AGAINST -- No arguments necessary since the provision in question is not part of this rulemaking.

RESPONSE 15: — The department appreciates the comment. However, the comment regarding the removal of the list of supplemental TAPs (Table 51.3) from the annual TEDI reporting requirements is outside the scope of this rulemaking.

COMMENT 16: §5107.A.1.b — The commenters strongly oppose this Subparagraph as it is written. Either delete this requirement or amend the language to require reporting the discharge of TAP emissions in the annual TEDI report *only* if those emissions exceed a reportable quantity (RQ). Reporting emissions without meaningful criteria is burdensome and will cause confusion for the regulated community, the department, and the public. The department is improperly interpreting R.S. 30:2060.E more stringently than R.S. 30:2060.H.1. There is no reason why “All discharges to the atmosphere of a toxic air pollutant ...” would be included on the TEDI report regardless of the RQ and without regard to the amount. The existing rule goes beyond the statute. The department should exercise its inherent authority to waive statutory requirements where imposing these requirements would

achieve only a *de minimis* (trivial) benefit. The department is going beyond what is useful, practical, or what has been mandated by the Louisiana legislature. The language should either be deleted, or at a minimum, amended as suggested below.

Unless otherwise provided pursuant to a Part 70 air permit report, All discharges to the atmosphere of a toxic air pollutant from a safety relief device, a line or vessel rupture, a sudden equipment failure, or a bypass of an emission control device, that exceed a reportable quantity in LAC 33:I.3931 regardless of quantity, must be reported to the department in the annual emissions report. The report shall include the following information:

- i. the identity of the source;
- ii. the date and time of the discharge; and
- iii. the approximate total loss during the discharge.

FOR: The department is requesting reporting that is beyond the legislative mandate.

AGAINST: The department needs accurate information concerning discharges of toxic air pollutants.

RESPONSE 16: §5107.A.1.b — R.S. 30:2060.E requires the department to maintain an air toxics inventory and the department assumes that the legislature expected some measure of accuracy. The amounts of unauthorized discharges are included in the air toxics inventory. When RQs are used as a trigger for reporting then all discharges less than the RQ are omitted and the inventory indicates less toxic emissions than were actually emitted. The department agrees that reporting less than some *de minimis* amount is not very beneficial, but the department also believes it is reasonable to attempt to keep the accuracy of the inventory to the maximum extent possible. The requirement in the proposed rule is exactly the same as it is in the current rule. The paragraph was relocated from its current location at LAC 33:III.5107.B.5 to LAC 33:III.5107.A.1.b, with no changes. The rule will be substantively changed using the following concept as a *de minimis* trigger; if the discharge is measurable and can be reliably quantified using good engineering practices, then it should be included and reported in the inventory.

COMMENT 17: §5107.D — Streamline the public notice requirements in this rule

to correlate to the public notice requirements in LAC 33:III.531 and other Part 70 regulations. Other public notice and comment regulations in Chapter 5 adequately address public notice for modifications involving TAPs. The regulation, LAC 33:III.531.A.1, gives the department the authority to require public notice for any permit modification which it deems necessary. The department is encouraged to use this provision and delete all public notice requirements from Chapter 51.

FOR: Chapter 51 public notice requirements at LAC 33:III.5107.D can be eliminated and there will be no loss of stringency because of LAC 33:III.531.A.1.

AGAINST: There may be situations where the public notice requirements in LAC 33:5107.D and LAC 33:III.531.A.1 need to be complementary.

RESPONSE 17: §5107.D — A discretionary LAC 33:III.531.A.1 requirement should not replace a mandatory LAC 33:III.5107 requirement. LAC 33:III.531.A.1 limits public notice to the discretion of the permitting authority. The proposed LAC 33:III.5107.D requires public notice before issuing any permit that would allow a permitted increase of any Class 1 or Class 2 Louisiana toxic air pollutant by an amount greater than the minimum emission rate, or allow the addition of any new point source or emission unit that would emit a Class 1 or Class 2 Louisiana toxic air pollutant by an amount greater than the minimum emission rate.

COMMENT 18: §5109.D-G — The commenters are in agreement with the proposed changes to these Subsections. The statutory requirements of La R.S. 30:2060.N.2 have already been met and independent reliance on compliance plans will serve no useful purpose.

FOR/AGAINST -- No arguments necessary; comment does not suggest amendment or change.

RESPONSE 18: §5109.D-G — The department appreciates the support.

COMMENT 19: §5111 — This section pertains to: major source permit requirements; contents of application for a Louisiana air permit; and the permit review process. Chapter 5 (permit procedures)

and Section 1701 already contain this information. Subsection 5111.B should be deleted to avoid confusion with Subsection 517.D. Also, a separate permit review process in Chapter 51 is not needed because §519 addresses permit issuance procedures for new, renewed, or modified sources. If the department determines that specific permit requirements for air toxics are needed, these requirements should be incorporated into Chapter 5 for consistency and to avoid duplication.

FOR: The regulations in Chapter 5 already contain the permit procedures for submittal of an application and the permit review process. These regulations do not need to be duplicated in Chapter 51.

AGAINST: The definition of major source for Chapter 51 can exclude all definitions elsewhere, if the pollutants are TAPS, not hazardous air pollutants (HAPs). In addition, the Chapter 51 regulations are not currently state implementation plan (SIP) approved and thus are subject only to state enforcement, not federal enforcement. The department has no intention of submitting this revised Chapter 51 set of regulations for SIP approval.

RESPONSE 19: §5111 — The application submittal and permit review process shall remain separate because the possibility exists that only Chapter 51 permitting requirements may be necessary.

COMMENT 20: §5112 — The department is encouraged to continue to comply with La. R.S. 30:2060 in revising the TAP list every 3 years by adding new pollutants or deleting substances that no longer meet the definition of toxic air pollutant. Historical emission data reported on the TEDI reports should be used to determine which chemicals, based on their current emission rates, could be removed.

The department should strongly consider removing or exempting ammonia from the TAP list because ammonia plays a role under the NO_x control strategy for ozone compliance and will play a major role under the clean air interstate rule (CAIR). Ammonia is also of consideration in the control of other pollutants. Retaining ammonia as a TAP may preclude the installation of viable control options under other air regulatory schemes.

FOR: The department agrees with the suggestion to revise the TAP list every three years since new and more accurate information continues to be gathered on the health effects of toxic air

pollutants. The department should base the TAP list on the best available health and risk information as well as historical emission data.

AGAINST: Retaining ammonia as a TAP should not prevent the installation of viable control options under other air regulatory schemes. These controls can be implemented regardless of the listing of ammonia as a TAP.

RESPONSE 20: §5112 — The department appreciates the support of the revision to change the review of the TAP list to every three years.

The department appreciates the comment regarding ammonia, but the comments for delisting or exempting ammonia are outside the scope of this rulemaking.

Comment Summary Response & Concise Statement Key – AQ256
Amendments to the Air Regulations
Comprehensive Toxic Air Pollutant Emission Control Program
LAC 33:III.221, 223, 551, 5101, 5103, 5105, 5107, 5109, 5111, and 5112

COMMENT #

SUGGESTED BY

1 — 2

Richard Metcalf of La. Air and Gas Association
representing LCA, LMOGA, and LPPA

3 — 20

Kyle B. Beall of KeanMiller for LCA, LMOGA, LPPA,
and LOGA

June 28, 2007

Judith A. Schuerman, Ph.D.
Louisiana Department of Environmental Quality
Office of Secretary, Legal Affairs Division
P.O. Box 4302
Baton Rouge, Louisiana 70821-4302

HAND-DELIVERED

Re: **Comments on Proposed Rulemaking AQ256S**
LAC 33:III.Chapter 51
Our File Nos.: 3645-72, 15032-19

Dear Dr. Schuerman:

The following comments are submitted on behalf of the Louisiana Chemical Association, the Louisiana Mid-Continent Oil & Gas Association, the Louisiana Pulp & Paper Association, and the Louisiana Oil & Gas Association (collectively referred to as the "Associations"). The Associations have previously commented on this rulemaking on November 21, 2005, August 4, 2006 and January 31, 2007. To the extent relevant, those comments are again incorporated herein. The Associations appreciate the opportunity to comment on this rulemaking.

Comment 1: The Department should include an exemption in the "Applicability" section (5101.A) from LAC 33:III.Chapter 51 for major sources already subject to federal MACT standard(s).

The Associations request that the LDEQ revise the final rule to exempt from Chapter 51, major sources already subject to a federal MACT standard required by Section 112 of the federal Clean Air Act. Most major sources are subject to one or more federal MACT standards set forth in 40 C.F.R. Part 63, which have been incorporated by reference by the LDEQ pursuant to LAC 33:III.5122. The Associations believe this exemption is more appropriate in the "Applicability" provision of Section 5101.A, not in Section 5109.A.2, as proposed. The Associations would not, however, be exempt from fees required by LAC 33:III.Chapter 2.

For many source categories, compliance with the federal MACT standards has been used almost exclusively by the regulated community to demonstrate compliance with state MACT.¹ The EPA has finalized most, if not all, required federal MACT standards, and is currently reviewing necessary updates to existing MACTs as required by federal statute. The state rule requires that the LDEQ review and approve MACT compliance plans for sources subject to LAC 33:III.Chapter 51. La. R.S. 30:2060.N.2, however, recognizes that federal MACT standards would likely control TAP reductions and that the compliance schedule should be the same as the federal compliance schedule.²

The Associations believe that exempting units from Chapter 51 already subject to a federal MACT will save time and agency resources, thereby allowing the LDEQ to focus on compliance and enforcement of the federal MACT standards. The LDEQ has been delegated authority by EPA to implement the federal NESHAP program. The Associations believe that the LDEQ will be better suited in ensuring compliance with the federal MACT standards than continuing to require duplicative and overlapping state MACT requirements. To this extent, we request that an overall exemption be included in the "Applicability" section of Section 5101.A as follows:

§5101. Applicability

A. The provisions of this Subchapter and LAC 33:III.905 apply to the owner or operator of any *major source*, as defined herein in LAC 33:III.5103, unless exempted under LAC 33:5105.B or by Subsection D of this section. ...

1 A list of final federal MACT standards can be assessed at <http://www.epa.gov/ttn/atw/mactfnlalp.html>.

2 Section 2060.N.2 provides, in pertinent part:

The department shall provide technical assistance to affected sources and serve to coordinate among similar sources the determination of maximum achievable control technology as shall be defined and required in regulations adopted pursuant to this Section. ... If for any major source a department approved compliance plan establishes a maximum achievable control technology determination or compliance schedule which conflicts with or is significantly different from an applicable maximum achievable control technology (MACT) standard or schedule proposed, promulgated, or under development by the Environmental Protection Agency, such sources shall be allowed to voluntarily submit compliance plan revisions to reflect the federal MACT standard or schedule. The department shall review any such plan revisions in accordance with procedures established for compliance plan review and approval pursuant to regulations adopted under this Section. ...

D. Sources Subject to Federal MACT Standard. Any affected source that is included in a section 112(c) source category or subcategory that is subject to a section 112(d) standard (federal MACT) is not subject to the provisions of this Subchapter. An affected source means the collection of equipment, activities, or both within a single contiguous area and under common control which is further defined by the relevant 112(d) standard. The administrative authority may require controls beyond the provisions of the 112(d) upon demonstration that additional controls are necessary to protect human health or the environment.

Comment 2: The concept of minimum emission rates (MERs) is no longer a valid basis for determining whether a significant change in emissions will occur and any such references should be removed from LAC 33:III.Chapter 51.

The MERs listed in LAC 33:III.5112 were initially developed based on air dispersion modeling of each TAP given a worst-case scenario with a stack height of 1 meter and a fence line distance of 100 meters. The MER, therefore, is the “minimum emission rate” of a TAP that could result in a concentration equal to the ambient air standard for the TAP based on the worst-case modeling scenario. The MER is referenced throughout the air regulations as a threshold for fees, exemptions, insignificant activities and throughout Chapter 51 (e.g., definition of “modification,” discharge reporting requirements, public notice provisions, MACT applicability, and ambient air standard compliance determination).

Initially in Chapter 51, the MER provided a means to determine if MACT was applicable and if ambient air modeling was required to demonstrate compliance with the ambient air standard. The MER also established a threshold above which public notice was required for permit modifications. Because Chapter 51 requirements have contributed to over a 50 percent reduction of air toxics emissions in Louisiana, the goal of the statute has been met. The Associations propose that the MER no longer be used as a significance level for determining the applicability of the following sections of the Louisiana Air Quality regulations. This is particularly true for major sources that have implemented the requirements of the Chapter 51 compliance plan and/or applicable federal MACT standard(s).

The following examples demonstrate the outdated use of the MER in the Louisiana Air Quality Regulations:

LAC 33:III.501.B.4.ii – Exemptions Granted by the Permitting Authority

Currently the criteria of this exemption includes that the source emits or has the potential to emit less than the minimum emission rate listed in LAC 33: III.5112,

Table 51.1 for each Louisiana toxic air pollutant. The Associations propose that the MER thresholds be deleted from the exemption criteria.

LAC 33:III. 501.B.5 – Table A (2,3,6,9,10,and 11) Insignificant Activities List

The criteria for the insignificant activities for the sections listed above include a requirement that emissions not exceed any MER listed in LAC 33:III.5112, Table 51.1. These sections address the following sources: 1) storage tanks less than 250 gallons storing organic liquids having a true vapor pressure less than or equal to 3.5 psia; 2) storage tanks less than 10,000 gallons storing organic liquids having a true vapor pressure less than 0.5 psia; 3) emissions from laboratory equipment/vents used exclusively for routine chemical or physical analysis for quality control or environmental monitoring purposes; 4) emission from process stream or process vent analyzers; 5) storage tanks containing exclusively, soaps, detergents, surfactants, waxes, glycerin, vegetable oils, grease, animal fats, sweetener, molasses, corn syrup, aqueous salt solutions, or aqueous caustic solutions, provided an organic solvent has not been mixed with such materials; 6) catalyst charging operations; and 7) portable cooling towers used on a temporary basis in maintenance activities. The Associations propose that the requirement that emissions from a source not exceed an MER to qualify as an insignificant activity be deleted from these sections.

LAC 33:III. 501.B.5 – Table D Insig. Activities Based on Emission Levels

Table D requires that the emission unit emits and has the potential to emit less than the minimum emission rate listed in LAC 33:III.5112, Table 51.1, for each TAP. The Associations propose that the requirement that the emissions not exceed an MER be deleted from this section.

LAC 33:III.5107.D. Public Notice Provisions

Public notice is currently required before granting approval for construction or issuing any permit which would allow an increase in any Louisiana toxic air pollutant by an amount greater than the MER or allow the addition of any new point source or emission unit which would emit a Louisiana toxic air pollutant by an amount greater than the minimum emission rate.

The Associations propose that the public notice provisions section be removed from Chapter 51. Currently public notice is required for initial applications for Title V Permits, renewal application for Title V Permits, and Title I Modifications. Additionally, the Department has the authority to require a public notice at its discretion. As such, public notice requirements in Chapter 51 are redundant and unnecessary to adequately inform the public

The Associations encourage the Department to review the continued use of MERs as a part of its Louisiana Air Quality program. The MER concept served its purpose while the goals of the Air Toxics Program were being implemented, but are no longer a valid measure for exemptions, or public notice. As stated in the Associations comments to OS078, MERs should by no means be used to trigger the release notification requirements. The Associations request that the Department continue to include MERs as a basis for the requirements in LAC 33:III.5109.A and B.

Comment 3: The Associations request that the Department revise the exemption in proposed LAC 33:III.5105.B.2.c to exclude emissions from all plant-produced fuel. In the alternative, the Associations request that the Department revise the definition of "virgin fossil fuel" in LAC 33:III.5103 to *include* plant-produced fuel. The Associations strongly object to the proposed change to delete "refinery fuel gas" from the existing definition of "virgin fossil fuel" and request that this be reinserted in the final rule.

For the following reasons, the Associations request that the Department revise proposed Section 5105.B.2.c to exclude all plant-produced fuel from the requirements of LAC 33:III.Chapter 51. There is no scientific or practical basis for the LDEQ to regulate plant-produced fuel pursuant to the state air toxics rule, and such regulation contradicts similar federal HAP rules. The Associations also object to the proposal to delete "refinery fuel gas" from the definition of "virgin fossil fuel" as proposed for the first time in AQ256S. The Associations request that "refinery fuel gas" be reinserted in Section 5103 and that the either of the following be used in Section 5105.B.2.c:

c. emissions from the combustion of plant-produced gas streams that are generated alone or blended with other sources of virgin fossil fuels and used as fuel.

OR

c. emissions from the combustion of any other "gaseous fuel" as defined in 40 CFR Part 63, Subpart DDDDD.

The Associations believe that this exemption for plant-produced fuel, including both refinery and chemical plant fuel gas, is warranted. In prior comments on AQ256, the Associations have requested that the Department revise the definition of "virgin fossil fuel" in LAC 33:III.5103 to include all plant-produced streams used as fuel. As currently proposed in AQ256S, process vent gas combusted as fuel at major sources will be subject to Chapter 51. The EPA excludes such vents from federal MACT standards due to the high efficiency of boilers and process heaters. The Department should also recognize this

in the final rule and include the above exemption for combustion sources that combust plant-produced fuel, including refinery and chemical plant fuel gas streams. This would also place the refining and chemical industries on an even footing with the utility industry, which the Department proposes to exempt entirely from the requirements of Chapter 51 regardless of fuel type.

As proposed, the Department also has not satisfied the requirements under La. R.S. 30:2019.D and La. R.S. 49:953.G which require a cost-benefit analysis and a risk-benefit report. The Associations do not believe that the proposed rule will meet any exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3), and, as proposed, has the potential to cost more than \$1 million, in the aggregate, to implement. Thus, if the Department intends to promulgate a final rule based on the proposed language in AQ256S, the Associations believe these requirements must be met and specifically reserve the right to challenge the rule for any failure to do so.

The EPA excludes such gases from federal MACT standards due to the high efficiency of boilers and process heaters. With respect to these sources, the EPA has specifically stated that "In general, it is expected that SOCM chemicals affected by this standard would be easier to combust than natural gas." *See*, Background Information Document for NSPS Subpart RRR, EPA-450-90-01, p. 2-41). The EPA further reasoned that because such streams are valuable as fuel, the facility would be expected to keep the combustion efficiency at as high a level as possible. *Id.* This is, in fact, the case in practice, especially considering the increasing demand and cost of natural gas. Because boilers and heaters used in the chemical industry sector are operated at as high or higher efficiencies as sources that combust virgin fossil fuels, it makes no sense for the LDEQ to not exclude these fuel streams from the requirements of LAC 33:III.Chapter 51. For this reason, the Associations strongly encourage the Department to adopt its proposed language to Section 5105.B.2.c above.

The LDEQ attempted to address comments submitted in response to a prior proposed rule (AQ256) by adding a new subsection (5105.B.3.c) that provides the following exemption: "emissions from the combustion of gas streams not containing toxic air pollutants listed in LAC 33:III.5112, Table 51.1 or 51.3 that are generated by onsite operations, and used as fuel." This exemption, however, is not broad enough to exempt the large majority of combustion units that may contain minor amounts of toxic air pollutants. The requirement that the fuel "not contain toxic air pollutants" essentially renders the exemption useless for most sources. The existing definition of "virgin fossil fuel" includes liquid petroleum gas, natural gas, distillate fuel oil, diesel fuel, and refinery fuel gas, all of which also contain minor amounts of toxic air pollutants. To be consistent, the Associations request that the Department change the exemption as suggested above in this Comment.

In conclusion, the Associations believe that a specific exemption for plant-produced fuel is warranted and should be included as suggested above. "Refinery fuel gas" should further be reinserted into the definition of "virgin fossil fuel" in LAC 33:III.5103. Based on the current and expected future costs associated with energy production, these streams should be treated as the valuable products that they are. In the alternative, the Department should include "refinery fuel and other plant-produced fuel" into the definition of "virgin fossil fuel" in LAC 33:III.5103. As stated, there is no practical difference between emissions from these sources.

Comment 4: The Associations request that the LDEQ delete references to Table 51.3 (Louisiana Toxic Air Pollutants Supplemental List) from the reporting requirements in LAC 33:III.5107 and from the "Explanatory Notes" of the following Table 51.3 in Section 5112.

The Associations request that all references to Table 51.3 (Louisiana Toxic Air Pollutants Supplemental List) be deleted from Section 5107 and from the "Explanatory Notes" of the following Table 51.3 in Section 5112. The Associations believe that there is no justification for the emissions on the Supplemental List to be included in the toxic emissions data inventory (TEDI) report. As acknowledged by the Department in the footnote to Table 51.3, neither minimum emission rates nor ambient air quality standards have been established for the pollutants set forth on the Supplemental List since it was created in 1993. Furthermore, a significant portion of Chapter 51 does not apply to the Supplemental List. The Associations, therefore, question the value of continuing to report these emissions annually and request that all references to Table 51.3 be removed from the annual reporting requirements of LAC 33:III.5107.

The above position is supported by both the "Louisiana Air Toxics Annual Emissions Report," dated May 1995 and the associated "Background Documentation" for the Louisiana TAP List, dated May 22, 1992. The 1995 report provides the following relevant background:

In 1992, DEQ promulgated a supplemental list of approximately one hundred additional toxic air pollutants. This supplemental list includes all federally listed hazardous air pollutants not initially included in the Louisiana list. Control technology and ambient air standard compliance are currently not required for the supplement list of air toxics, **which represent less than 1% of the total air emissions reported.**" (emphasis added).

Based on this background and the extremely low contribution to total TAP emissions, the Associations request that these supplemental pollutants not be required to

be reported on the TEDI. If the Department decides not to remove Table 51.3 from the annual reporting requirements, the Associations request that the Department justify its continued inclusion on the TEDI report.

Comment 5: The Associations request that the LDEQ clarify its proposed change to LAC 33:III.5107.A.1.b that requires all discharges to be included on the annual report "if it can be measured and can be reliably quantified using good engineering practices." The Associations believe that the LDEQ should only require reporting of discharges from the specified equipment if greater than a reportable quantity.

The Associations oppose proposed Section 5107.A.1.b (formerly Section 5107.B.5), as written. The Associations request that the LDEQ delete this requirement altogether or, at a minimum, require reporting the discharge of TAP emissions in the annual TEDI report *only* if those emissions exceed an RQ. The requirement to report emissions without meaningful criteria is burdensome and will cause confusion to the regulated community, the LDEQ, and the public. The vague and ambiguous language added to the May 20, 2007 re-proposed rule still does not make clear when certain discharges will need to be included in the TEDI. In addition, the level of detail requested in Section 5107.B.A.b.i-iii is overly broad and burdensome.

The statutory authority for the TEDI report is set forth in La. R.S. 30:2060.E and provides the following mandate to the LDEQ:

In order to facilitate the identification and quantification of toxic air pollutants and the compilation and maintenance of the comprehensive air emissions inventory required in R.S. 30:2054(A)(1), the department shall require facilities which emit or discharge toxic air pollutants, or substances under evaluation for such designation, to provide to the office the identity and quantities of such air contaminants emitted. Such information shall be made readily available to the public by the department in an easily accessible form.

La. R.S. 30:2060.H.1 requires the following release notification requirements:

For any discharge of a toxic air pollutant into the atmosphere of Louisiana, the rate or quantity of which is in excess of that allowed by permit, license, compliance schedule, or variance or, for upset events, **that exceed the reportable quantity established by regulation**, the owner or operator of the source from which such discharge occurs shall immediately notify the department by telephone, and shall submit a written report within seven days... (Emphasis added).

The existing rule under LAC 33:III.5107.B.5 (proposed as Section 5107.A.1.b) goes beyond the statutory directive as it requires reporting of certain releases even where they are less than the RQ. By requiring reporting of all TAP emissions (where it can be “measured” and “reliably quantified”) on the TEDI, regardless of RQ, the LDEQ is improperly interpreting Subsection E more stringently than the release notification requirements in Subsection H. There is no practical reason why all “discharges to the atmosphere of a toxic air pollutant” should be included on the TEDI regardless of RQ and without any regard to amount. Furthermore, the LDEQ has not demonstrated how the “identity of the source,” the “date and time of the discharge,” and the “approximate total loss of the discharge” are even used by the agency.

The Associations believe that the existing rule goes beyond the statute. However, even if the Department believes that it does not, the Department should exercise its inherent authority to waive statutory requirements where imposition of such requirements would achieve only a *de minimis* or trivial benefit.³ In *Alabama Power*, the court found that EPA had the authority to create *de minimis* exceptions to the Clean Air Act requirement that all modifications to major stationary sources should be subject to PSD review. The court stated: “[T]o exempt *de minimis* situations from a statutory command is not an ability to depart from the statute, but rather a tool to be used in implementing the legislative design.” In holding that EPA had the authority to set *de minimis* levels at which PSD would not be triggered, the court noted that some increases were simply too small for EPA to expend resources to address them. Thus, *Alabama Power* supports the notion that a trivial benefit can be waived if it is too costly in terms of agency resources.⁴

Likewise, in *Environmental Defense Fund*, EDF challenged a presumption created by EPA in the federal action conformity rules that sources below the “major source” thresholds are presumed to conform without a specific analysis of their conformity. They applied the principles set forth in *Alabama Power* to find that EPA’s exemption was reasonable, even in the light of a statute that did not appear to allow for an exemption. The court stated:

3 Inherent agency authority has been recognized by numerous court decisions, including *E.I. du Pont de Nemours v. Train*, 430 U.S. 112, 128 (1977); *Chemical Manufacturers Ass’n v. Natural Resources Defense Council*, 470 U.S. 116 (1985); *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C. Cir. 1979); and *Environmental Defense Fund, Inc. v. EPA*, 82 F.3d 451 (D.C. Cir. 1996).

4 See also, *Portland Cement Ass’n v. Ruckelshaus*, 486 F.2d 375, 399 (D.C. Cir. 1973) where the court found that EPA may create waivers or exemptions that “impart . . . a construction of ‘reasonableness’ to the standards as a whole and adopt . . . a more flexible system of regulation than can be had by a system devoid of ‘give’”).

According to EDF, the broad prohibition in section 176(c)(1)-- "[n]o department, agency, or instrumentality of the Federal Government shall engage in ... any activity"--shows that the Congress intended the general conformity requirement to apply to every activity of the federal government, **however minor a source of emissions it may be....** as we explained in *Alabama Power Co. v. Costle*, 636 F.2d 323 (D.C.Cir.1979), categorical exemptions from the requirements of a statute may be permissible **"as an exercise of agency power, inherent in most statutory schemes, to overlook circumstances that in context may fairly be considered *de minimis*...."** Moreover, we noted in that case, as we had in *Public Citizen v. Young*, that "the literal meaning of a statute need not be followed where the precise terms lead to absurd or futile results, or where failure to allow a *de minimis* exemption is contrary to the primary legislative goal." *Id.* at 1535. Because the EPA's regulation avoided a "mammoth monitoring burden" and yet "square[d] with the health-protective purpose of the statute," we concluded that to require a different result would be "to adjudge Congress incompetent to fashion a rational legislative design." *Id.* at 1534-35. (Emphasis added).

The benefits of requiring reporting of these releases below RQs are clearly *de minimis* when compared to the administrative burdens associated with such data. Facilities are already required to report permit deviations where below an RQ under the General Conditions of both Title V and state permits. If an event is not a permit deviation and is not below an RQ, there is only a trivial benefit, if any, to require these emissions in an annual report. The LDEQ is going far beyond what is useful, practical, or what has been mandated by the Louisiana Legislature to include in the TEDI. For these reasons, the Associations request that the LDEQ delete proposed Section 5107.A.1.b altogether, or at a minimum, change the regulation as suggested below. This limitation will ensure that the LDEQ is provided useful and meaningful information in a timely manner by the regulated community.

Unless otherwise provided pursuant to a Part 70 air permit report,
Aall discharges to the atmosphere of a toxic air pollutant from a
safety relief device, a line or vessel rupture, a sudden equipment
failure, or a bypass of an emission control device, that exceed a
reportable quantity in LAC 33:1.3931 regardless of quantity, must be
reported to the department in the annual emission report. The report
shall include the following information:

- i. ~~the identity of the source;~~
- ii. ~~the date and time of the discharge; and~~

- iii. ~~the approximate total loss during the discharge.~~

Comment 6: The Associations support the proposed changes to LAC 33:III.5107.B.

The Associations support the proposed changes to LAC 33:III.5107.B. These changes are necessary to streamline these regulations with the release reporting requirements set forth in LAC 33:I.Chapter.39. Because the Chapter 39 reporting regulations already adequately address discharge reporting requirements for all listed TAPs, the Associations believe that the notification requirements in existing LAC 33:III.5107.B are duplicative and unnecessary. Additionally, the quarterly, semi-annual and annual Part 70 reporting requirements address most, if not all, of these same reporting requirements. Notwithstanding this support, the Associations reiterate its comments to rulemaking OS078 regarding proposed changes to LAC 33:III.Chapter 39 concerning toxic air pollutants.

Comment 7: The Associations request that the LDEQ streamline the public notice requirements set forth in the existing air toxics rule to correlate to the public notice requirements set forth in LAC 33:III.531 and other Part 70 regulations.

Because other public notice and comment regulations in Chapter 5 of the Louisiana Air Quality Regulations already adequately address public notice for modifications involving TAPs, the Associations believe that the public notice provision in LAC 33:III.5107.D is duplicative and unnecessary. Proposed LAC 33:III.5107.D would require the following public notice provision:

D. Public Notice Provisions.

The administrative authority shall provide at least 30 days for public comment and shall give notice of any public hearing at least 30 days in advance of the hearing before granting approval for construction or issuing any permit that would:

1. allow a permitted increase in any Class 1 or Class 2 Louisiana toxic air pollutant by an amount greater than the minimum emission rate; or
2. allow the addition of any new point source or emission unit that would emit any Class 1 or Class 2 Louisiana toxic air pollutant by an amount greater than the minimum emission rate.

Since the adoption of the existing public notice provision in 1991, the LDEQ has become the delegated permitting authority for the Part 70 Operating Permits program in Louisiana.⁵ Therefore, since 1995, the LDEQ has followed the amended public notice provisions set forth in LAC 33:III.531. The Part 70 applicability provisions set forth in Section 507.A.1 include sources that constitute a "major source" as defined in LAC 33:III.502. Among other things, major sources include major sources under Section 112 of the Clean Air Act. Thus, major sources of federal HAPs will also be major sources of state TAPs for many facilities in Louisiana, and, therefore, be subject to the Part 70 Operating Permits program and the underlying public notice provisions.

The public notice requirement in LAC 33:III.531 satisfies all public notice requirements for new major sources and modifications to existing major sources. As discussed in Comment No. 2 above, the Associations believe that permit modifications should no longer be based on the MER. Other procedures specified in Chapter 5 of the Louisiana Air Quality Regulations (e.g., LAC 33:III.521, 525, 527) are currently being used by the LDEQ to determine the procedures for permit modifications. Public notice and comment is adequately addressed based on the type of changes established therein. For instance, LAC 33:III.531 requires public notice for *all* of the following circumstances: (1) issuance of initial Part 70 permits (LAC 33:III.531.A.2.a); (2) renewal of Part 70 permits (LAC 33:III.531.A.2.b); and (3) significant modifications to permits as defined in LAC 33:III.527 (LAC 33:III.531.A.2.c). Additionally, LAC 33:III.527 specifies that, at a minimum, the following changes shall require significant modification procedures: (1) Title I modifications;⁶ (2) significant changes in existing monitoring requirements; and (3) a relaxation of reporting or recordkeeping requirements. Therefore, changes which result in the applicability of a MACT determination currently requires public notice pursuant to LAC 33:III.531.

⁵ The LDEQ was delegated final authority by EPA Region 6 to implement the Part 70 operating permits program on September 12, 1995. *See*, 60 Fed. Reg. 47,296 (Sep. 12, 1995).

⁶ "Title I Modification" is defined in LAC 33:III.502 to mean:

any physical change or change in the method of operation of a stationary source which increases the amount of any regulated air pollutant emitted or which results in the emission of any regulated air pollutant not previously emitted and which meets one or more of the following descriptions ... d. **the change will result in the applicability of a maximum achievable control technology (MACT) determination** pursuant to regulations promulgated under section 112(g) (Modifications, Hazardous Air Pollutants of the Clean Air Act. (emphasis added)

In summary, the Associations believe that all public notification requirements are already adequately addressed in other public notice provisions and that a special public notice provision for TAPs is now unnecessary. LAC 33:III.531.A.1 provides: "At the discretion of the permitting authority [LDEQ], public notice may be provided prior to issuance of any new or revised permit under this Chapter." Based on this regulation, the LDEQ has the explicit authority to require public notice for *any* permit modification which it deems necessary. The Associations, therefore, encourage the Department to use this provision, when necessary, and delete all public notice requirements from Chapter 51.

Comment 8: The Associations support the exemption from LAC 33:III.5109.C for sources already subject to MACT standards established in 40 C.F.R. Part 63.

The requirement to develop standard operating procedures (SOPs) is not necessary in the state rule due to the similar and more descriptive requirements of the general duty provisions of 40 CFR 63, Subpart A (*See*, 40 C.F.R. § 63.6(e), for example). These provisions address the need for a plan to address emissions of HAPs at all times in order to maintain compliance with the standards, require that such be in place prior to initial start-up, and allow for the use of standard operating procedures as part of such mechanisms.

Comment 9: The Associations support the proposed changes to Section 5109.D.1 concerning compliance timing.

Pursuant to the existing rule, major sources were required to submit air toxics compliance plans within one year of rule promulgation, and compliance was generally required within three years upon approval of the plan. Compliance could not be extended beyond six years of rule promulgation. Since the rule was promulgated in December 1991, all major sources were required to be in compliance by December 1997. Accordingly, existing sources submitted compliance plans to LDEQ, received approval from the Department and executed the plans per the required schedule. Compliance plan requirements were then incorporated into operating permits. The Associations believe this comports with the statutory requirements set forth in La. R.S. 30:2060.N.2 and that independent reliance on compliance plans in the future serves no useful purpose.

Comment 10: The Associations request that the permit requirement and application provisions in proposed LAC 33:III.5111 be removed to the extent that information is already required to be submitted pursuant to LAC 33:III.Chapter 5.

As proposed, LAC 33:III.5111 will still address major source permit requirements, and the contents of permit applications. The Associations believe that both of these

sections contain information already included in the LAC 33:III.Chapter 5 (permit procedures), and LAC 33:III.1701. Because LAC 33:III.517.D specifies the required contents for all air permit applications, including sources of air toxics, the Associations request that Section 5111.B be deleted to avoid confusion and overlapping requirements. Similarly, Section 519 addresses permit issuance procedures for new, renewed, or modified sources. Because the initial air permit applications for existing sources of air toxics have already been submitted, a separate permit review process within Chapter 51 is no longer necessary.

In the alternative, if the LDEQ determines that specific permit requirements for air toxics are needed (which the Associations believe are unnecessary for the above reasons), then these requirements should be incorporated into Chapter 5 to provide for consistency and avoid duplication in the permitting procedures. In addition, the mechanism (e.g., compliance plan, permit modification, permit by rule, etc.) to implement any new “state-only” requirement should be identified in the same regulatory action that precipitates the need for additional controls.

Finally, the Associations object to certain information requested in proposed Section 5111.B.3.b and d. Part 70 sources are already required to submit all permit deviations (which would include violations) to the Department on a quarterly basis. In addition, the Department should already have all of the requested information on its Electronic Data Management System (EDMS). As such, this information should already be on file with the Department and should not be re-requested in a permit application. Similarly, the production capacity requested by existing Section 5111.B.3.b should be removed from the final rule. To the extent this information is relevant to emissions, it should already have been provided pursuant to subparagraph 5111.B.2c.

Comment 11: The Associations request that the Department delete the requirement for sources to list enforcement actions outside of Louisiana as proposed in LAC 33:III.5111.B.3.e.

The Department has proposed that sources that have not been operating in Louisiana for at least five years must provide a “listing of all enforcement actions taken against the owner or operator for violations of United States federal or state environmental laws or regulations and any other compliance history information requested by the administrative authority.” The Associations believe that this requirement is overly broad and unnecessary, and request that the Department limit this requirement to enforcement actions issued by the LDEQ since the facility commenced operations. A requirement to list *all* enforcement actions by either the owner or operator could be a huge undertaking for larger facilities, depending on how the Department

defines owner or operator. If the Department decides not to change this provision, the Associations request that it narrowly define owner or operator for these purposes.

Conclusion and Incorporation by Reference

The Associations appreciate the opportunity to comment on this rulemaking and look forward to working with the LDEQ on the final rule. The Associations support the attempt by the LDEQ to make substantive changes to Chapter 51 and believe these changes are justified since the adoption of the Title V program and the promulgation of the numerous federal MACT standards.

Comments relevant to the ambient air quality standards and/or the MERs for specific compounds were submitted to the LDEQ on May 21, 2007 in response to the solicitation of comments for AQ281. Comments on OS078 relevant to release notification provisions for toxic air pollutants (and MERs) were submitted to the LDEQ on June 29, 2007. To the extent relevant, those comments are incorporated by reference into these comments.

If you have any questions, feel free to contact the Association representatives copied on this letter, or I can be reached at (225)382-3493 or kyle.beall@keanmiller.com.

Very truly yours,



Kyle B. Beall

cc: Henry Graham, LCA
Richard Metcalf, LMOGA
Don Briggs, LOGA
Will Perkins, LPPA

DEPARTMENT OF ENVIRONMENTAL QUALITY

AQ256

* * * * *

The above-entitled cause came in for a
Hearing in the Oliver Pollock Room, Galvez
Conference Room, 602 N. 5th Street, Baton
Rouge, Louisiana 70802, on Wednesday,
January 24, 2007, commencing at 1:30 p.m.

REPORTED BY:

TARA TORRES

CERTIFIED COURT REPORTER IN
AND FOR THE STATE OF
LOUISIANA

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FEB 16 2007

LDEQ/OSEC/LAD
REGULATION DEVELOPMENT SECTION

COPY

1

I N D E X

PAGE

2

Caption. 1

Introduction 3

3

By Mr. Metcalf. 6

Reporter's Page. 9

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Reporter's Certificate 10

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1 MS. STEPHENS:

2 Good afternoon. My name is
3 Sandy Stephens and I'm employed with
4 the Louisiana Department of
5 Environmental Quality. I'll be
6 serving as hearing officer this
7 afternoon to receive comments
8 regarding proposed amendments to the
9 Environmental Quality regulations,
10 the Pointe Coupee Parish Ozone
11 Maintenance Plan and the Water
12 Quality Management Plan.

13 The comment period for all of
14 these revisions began on December
15 20, 2006, when the notices of intent
16 and Potpourri notices were published
17 in the Louisiana Register. The
18 comment periods will close at 4:30
19 p.m., January 31, 2007, for Log
20 Numbers AQ256, AQ271, AQ272, HW091P,
21 HW092, OS071S, OS072, and the Pointe
22 Coupee Parish Ozone Maintenance
23 Plan.

24 The comment periods will close
25 at 4:30 p.m. February 15, 2007 for

1 the Log Number WQ054 and the Water Quality
2 Management Plan Revision. The comment
3 period will close at 4:30 p.m., February
4 28, 2007, for Log Number SW037. The
5 comment period will close at 4:30 p.m. on
6 March 6, 2007, for Log Number DPS001.

7 It would be helpful to us if all
8 oral comments received today were
9 followed up in writing.

10 This public hearing provides a
11 forum for all interested parties to
12 present comments on the proposed
13 changes. I will ask that each
14 person commenting come up and sit at
15 the front table and begin by stating
16 his or her name and affiliation for
17 the Record.

18 The first amendment on the
19 agenda is designated by the Log
20 Number AQ256.

21 The air toxic rule has been in
22 effect for 15 years. It currently
23 contains dated language that needs
24 to be removed or modified. Updating
25 the rule also addresses requests

1 from industry to streamline the
2 rule.

3 This amendment revises the air
4 toxic rule in the following ways.
5 It eliminates obsolete rule language
6 and most rule language concerning
7 compliance plans and certifications
8 of compliance. It removes obsolete
9 department requirements. It
10 clarifies area minor and major
11 source requirements. It utilizes
12 applicable federal Maximum
13 Achievable Control Technology MACT
14 rules 40 CFR Part 63 or state MACT.
15 It eliminates the exemption for
16 electric steam generating units. It
17 exempts virgin fossil fuels gas
18 streams not containing toxic air
19 pollutants at chemical plants. It
20 moves discharge reporting
21 requirements to LAC 33:1 Chapter 39.

22 It advances the submittal of the
23 Toxic Emissions Data Inventory TEDI
24 reports to not later than March 31
25 of each year. It exempts - it

1 exempts area minor sources from
2 submitting TEDI reports, and it
3 revises public notice requirements.

4 And the comments will begin with
5 Mr. Richard Metcalf.

6 MR. METCALF:

7 Good afternoon. My name is
8 Richard Metcalf. I'm the Health
9 Safety and Environmental affairs
10 coordinator for the Louisiana Air
11 and Gas Association. I'm here
12 today, however, representing the
13 Louisiana Chemical Association,
14 Midcontinent and the Louisiana Pulp
15 and Paper Association.

16 The associations appreciate the
17 department's willingness to revisit
18 and modernize the Chapter 51 toxic
19 air pollutant program to bring it in
20 closer harmony with the federal
21 program. Throughout this process
22 the association has submitted joint
23 comments and the associations will
24 submit joint written comments by
25 next week's deadline.

1 The proposed rule makes
2 significant progress towards closing
3 the philosophical gap between the
4 Chapter 51 approach to emission
5 control and the federal approach.
6 The association's plan to reiterate
7 some previously expressed concerns
8 regarding the fossil fuel exemption
9 provisions, the toxic emissions
10 database reporting requirements and
11 the role of the minimum emission
12 rate values in certain permitting
13 and reporting requirements.

14 Once again the association's
15 plan to submit joint written
16 comments on the proposed rule and
17 the association appreciates the
18 opportunity to submit these
19 comments. Thank you.

20 MS. STEPHENS:

21 Thank you. Does anyone else
22 care to comment on this amendment?
23 If not, the hearing on AQ256 is
24 closed.

25 This hearing is closed. Thank

1 you for your attention and
2 participation.
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24 R E P O R T E R ' S P A G E

25 I, Tara Torres, Certified Court

1 Reporter, in and for the State of
2 Louisiana, the officer, as defined in
3 Rule 28 of the Federal Rules of Civil
4 Procedure and/or Article 1434(b) of the
5 Louisiana Code of Civil Procedure,
6 before whom this sworn testimony was
7 taken, do hereby state on the Record:

8 That due to the interaction in
9 the spontaneous discourse of this
10 proceeding, dashes (--) have been used
11 to indicate pauses, changes in thought,
12 and/or talkovers; that same is the
13 proper method for a Court Reporter's
14 transcription of proceeding, and that
15 the dashes (--) do not indicate that
16 words or phrases have been left out of
17 this transcript;

18 That any words and/or names
19 which could not be verified through
20 reference material have been denoted
21 with the phrase "(phonetic)."

22

23

Tara Torres, CCR

24

Certified Court Reporter

25

C E R T I F I C A T E

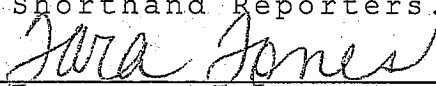
7

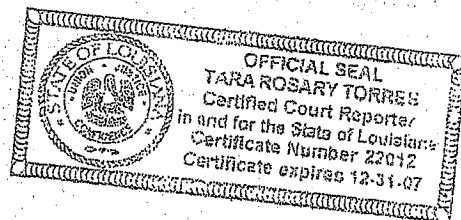
C E R T I F I C A T E

This certification is valid only for a transcript accompanied by my original signature and original raised seal on this page.

That this testimony was reported by me in the Stenomask method (voice-writing), was prepared and transcribed by me or under my personal direction and supervision, and is a true and correct transcript to the best of my ability and understanding;

That I am not related to counsel or to the parties herein; am not otherwise interested in the outcome of this matter; and am a valid member in good standing of the Louisiana State Board of Examiners of Certified Shorthand Reporters.


Tara Torres (#22012)
Certified Court Reporter



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JAN 30 2007

LDEG/OSEC/LAD
REGULATION DEVELOPMENT SECTION

Publisher of

THE NEWS-STAR
MONROE, LOUISIANA
PROOF OF PUBLICATION

The hereto attached advertisement
Was published in the NEWS-STAR.
A daily newspaper of general circulation.
Published in Monroe, Louisiana.
Parish of Ouachita in the issues of:

December 14, 2006
Christina

LEGAL AD DEPT.

Sworn and subscribed before me by

The person whose signature appears above in Monroe, LA on this

24 day of January 20 07 AD



Steven L. Turner # 43154

NOTARY PUBLIC

requirements to LAC 33:1, Chapter 39, advances the submittal of the Toxic Emissions Data Inventory (TEDI) reports to not later than March 31 of each year; exempts area (minor) sources from submitting TEDI reports; and revises public notice requirements.

The basis and rationale for this rule are to update the Louisiana Ambient Air Quality Standards to ensure continued protection of human health and the environment.

This proposed rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

A public hearing will be held on January 24, 2007, at 1:30 p.m. in the Galvez Building, Oliver Pollock Conference Room, 602 N. Fifth Street, Baton Rouge, LA 70802. Interested persons are invited to attend and submit oral comments on the proposed amendments. Should individuals with a disability need an accommodation in order to participate, contact Judith A. Schuerman, Ph.D., at the address given below or at (225) 219-3550. Parking in the Galvez Garage is free with a validated parking ticket.

All interested persons are invited to submit written comments on the proposed regulation. Persons commenting should reference this proposed regulation by AQ256. Such comments must be received no later than January 31, 2007, at 4:30 p.m., and should be sent to Judith A. Schuerman, Ph.D., Office of the Secretary, Legal Affairs Division, Box 4302, Baton Rouge, LA 70821-4302 or to fax (225) 219-3582 or by e-mail to judith.schuerman@la.gov. Copies of this proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for

each copy of AQ256. This regulation is available on the Internet at www.deq.louisiana.gov/portal/tarbid/1669/default.aspx.

This proposed regulation is available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1625 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471.

Herman Robinson, CPM
Executive Counsel

Monroe, LA
December 14, 2006

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Acadiana's Daily Newspaper

THE ADVERTISER

LDEQ/OSDC/LARD
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OSDC/Legal Affairs Division/
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Baton Rouge, LA 70821-4302

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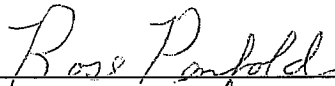
I, ROSE PENFOLD, do solemnly swear that I am the LEGAL CLERK of THE ADVERTISER,
a newspaper printed and published at Lafayette, in the Parish of Lafayette, State of Louisiana, and
that from my personal knowledge and reference to the files of said publication, the advertisement of

POTPOURRI
Department of Environmental Quality
Office of the Secretary
Legal Affairs Division

Advanced Notice of Proposed Rulemaking and Solicitation of Comments
on Toxic Air Pollutant Program Revisions, Log #AQ256
(LAC 33:III.211, 223, 551, 5101, 5105, 5107, 5109, 5111, 5112) (0606Pot1)

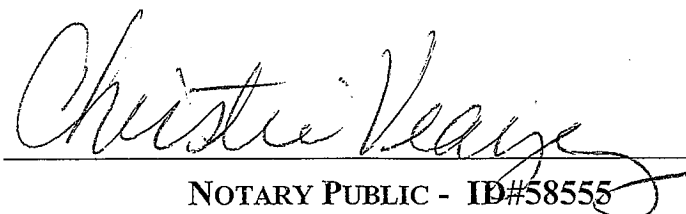
was published in **THE ADVERTISER** on the following dates:

***Wednesday, June 14, 2006**



ROSE PENFOLD
LEGAL CLERK

Sworn to and subscribed before me this 16 day of June, 2006.


NOTARY PUBLIC - ID#58555

612072

POTPOURRI

DEPARTMENT OF
Environmental Quality
Office of the Secretary
Legal Affairs Division

Advanced Notice of
Proposed Rulemaking
and Solicitation of
Comments
on Toxic Air Pollutant
Program Revisions,
Log #AQ256
(LAC 33:III.211, 223,
551, 5101, 5105, 5107,
5109, 5111, 5112)
(0606Pot1)

The Louisiana Department of Environmental Quality is developing revisions to the Air Toxic Rule and to the corresponding portions of the fee rule in LAC 33:III.211, 223, 551, and Chapter 51, Subchapter A (AQ256). This is a preliminary step in the rulemaking process. Official rulemaking will be initiated after review and consideration of the comments received on this advanced notice. The concurrent review of the ambient air standards that was announced in the previous potpourri notice published in the Louisiana Register on September 20, 2005, will be proposed as a separate rulemaking at a later date. The major draft revisions include (in no particular order):

- *Elimination of obsolete rule language and most rule language concerning compliance plans and certifications of compliance;

- *Removal of obsolete LDEQ requirements;

- *Clarification of area and major source requirements;

- *Utilization of applicable federal MACT rules (40 CFR Part 63) for state MACT (however LAC 33:III.905 will apply)

- *Elimination of the exemption for electric steam generating units;

- *Application of ambient air standards to all sources of toxic air pollutants (TAPs);

- *Addition made to exempt virgin fossil fuels gas streams not containing TAPs at chemical plants;

- *Advancing the submittal of the Toxic Emissions Data Inventory (TEDI) to not later than March 31 of each year;

- *Exemption of area sources from submitting TEDI; and

- *Revision of public notice requirements.

All interested persons are encouraged to submit written comments on the draft proposal. Comments are due no later than 4:30 p.m., August 4, 2006, and should be submitted to James Orgeron, Office of Environmental Assessment, Plan Development Section, Box 4314, Baton Rouge, LA 70821-4314 or faxed to (225) 219-3582 or by e-mail to james.orgeron@la.gov. If you have any questions regarding this document, please contact James Orgeron at (225) 219-3578. Copies of this draft proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ256. This draft regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

The draft regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374. Herman Robinson, CPM, Executive Counsel.

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REGULATION DEVELOPMENT SECTION

AFFIDAVIT OF PUBLICATION

0606Pot1

(A Correct Copy of Publication)

POTPOURRI

Department of
Environmental Quality
Office of the Secretary
Legal Affairs Division

Advanced Notice of
Proposed Rulemaking
and Solicitation of
Comments on Toxic
Air Pollutant Program
Revisions, Log #AQ256
LAC 33:111.211, 223,
551, 5101, 5105, 5107,
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Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

HERMAN ROBINSON,
CPM
Executive Counsel

(6) 17

I, Bill Buschmann, Classified Advertising Manager

of THE TOWN TALK, published at Alexandria,

Louisiana do solemnly swear that the

Public Notice

advertisement, as per clipping attached, was

published in the regular and entire issue of said

newspaper, and not in any supplement thereof

for one insertions commencing with the issue

dated June 17, 2006 and ending with the

issue dated June 17, 2006.

Bill Buschmann

Subscribed and sworn to before me
this 19th day of June, 2006

Notary Number 019888

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REGULATION DEVELOPMENT SECTION

Affidavit of Publication

POTPOURRI
Department of Environmental Quality
Office of the Secretary
Legal Affairs Division
Advanced Notice of Proposed Rulemaking and Solicitation of Comments on Toxic Air Pollutant Program Revisions, Log #AQ256

(LAC 33:111.211, 223, 551, 5101, 5105, 5107, 5109, 5111, 5112) (0606Pot1)
The Louisiana Department of Environmental Quality is developing revisions to the Air, Toxic Rule and to the corresponding portions of the fee rule in LAC 33:111.211, 223, 551, and Chapter 51, Subchapter A. (AQ256). This is a preliminary step in the rulemaking process. Official rulemaking will be initiated after review and consideration of the comments received on this advanced notice. The concurrent review of the ambient air standards that was announced in the previous potpourri notice published in the Louisiana Register on September 20, 2005, will be proposed as a separate rulemaking at a later date. The major draft revisions include (in no particular order):

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Clarification of area and major source requirements;

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Elimination of the exemption for electric steam generating units;

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Addition made to exempt virgin fossil fuels gas streams not containing TAPs at chemical plants;

Advancing the submission of the Toxic Emissions Data Inventory (TEDI) to not later than March 31 of each year;

Exemption of area sources from submitting TEDI; and

Revision of public notice requirements.

STATE OF LOUISIANA

Parish of Calcasieu

Before me the undersigned authority, personally came and appeared

Card Dickson
who being duly sworn, deposes and says:

He/She is a duly authorized agent of

LAKE CHARLES AMERICAN PRESS

a newspaper published daily at 4900 Highway 90 East,

Lake Charles, Louisiana, 70615. (Mail address: P.O. Box 2893

Lake Charles, LA 70602)

The attached Notice was published in said newspaper in its issue(s) dated:

00264866 - \$36.00

June 16, 2006

00053262
LA. DEQ OSEC/LARD
REGULATION DEVELOPMENT
REMENDER WEATHERSPOON
P.O. BOX 4302
BATON ROUGE, LA 70821-4302

Card Dickson

Duly Authorized Agent

Subscribed and sworn to before me on this 16th day of June, 2006 at Lake Charles, LA

Gwendolyn R. Dugas

00053262

Notary Public

LA. DEQ OSEC/LARD

Gwendolyn R. Dugas
#056523

All interested persons are encouraged to submit written comments on the draft proposal. Comments are due no later than 4:30 p.m., August 4, 2006, and should be submitted to James Orgeron, Office of Environmental Assessment, Plan Development Section, Box 4314, Baton Rouge, LA 70821-4314 or faxed to (225) 219-3582 or by e-mail to james.orgeron@la.gov. If you have any questions regarding this document, please contact James Orgeron at (225) 219-3578. Copies of this draft proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ256. This draft regulation is available on the Internet at www.deq.louisiana.gov under Rules and Regulations.

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Herman Robinson,
CPM
Executive Counsel
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Department of
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Legal Affairs Division

Advanced Notice of
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and Solicitation of Com-
ments

The Tion Toxic Air Pollu-
tant Program Revisions,
Log #AQ256
(LAC 33:III.211, 223,
551, 5101, 5105, 5107,
5109, 5111, 5112)
(0606Pot1)

The Louisiana Depart-
ment of Environmental
Quality is developing re-
visions to the Air Toxic
Rule and to the corre-
sponding portions of the
fee rule in LAC
33:III.211, 223, 551, and
Chapter 51, Subchapter
A (AQ256). This is a pre-
liminary step in the
rulemaking process. Offi-
cial rulemaking will be in-
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consideration of the
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this advanced notice.
The concurrent review of
the ambient air stand-
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potpourri notice publish-
ed in the Louisiana Reg-
ister on September 20,
2005, will be proposed
as a separate
rulemaking at a later
date. The major draft re-
visions include (in no
particular order):

" Elimination of obsolete
rule language and most
rule language concern-
ing compliance plans
and certifications of
compliance;

" Removal of obsolete
LDEQ requirements;

" Clarification of area
and major source
requirements;

" Utilization of applicable
federal MACT rules (40
CFR Part 63) for state
MACT (however LAC
33:III.905 will apply)

" Elimination of the ex-
emption for electric
steam generating units;

" Application of ambient
air standards to all sour-
ces of toxic air pollutants
(TAPs);

" Addition made to ex-
empt virgin fossil fuels
gas streams not contain-
ing TAPs at chemical
plants;

" Advancing the submit-
tal of the Toxic Emis-
sions Data Inventory
(TEDI) to not later than
March 31 of each year;

" Exemption of area
sources from submitting
TEDI; and

" Revision of public no-
tice requirements.

PROOF OF PUBLICATION

00000

STATE OF LOUISIANA

PARISH OF CADDO

Before me, the undersigned authority, personally came and appeared

Altheas Critton,

personally known to me,

Who being duly sworn, deposes and says that she is the Assistant to the
Classified Advertising Manager of The Times, and that the attached
Advertisement entitled:

POTPOURRI Department of Environmental Quality Office of the
Secretary Legal Affairs Division (0606Pot1)

June 14, 2006

(Signed)

Altheas Critton

Sworn to and subscribed before me this 14th day of June, 2006

Diana W. Barber
(Notary)

DIANA W. BARBER, NOTARY PUBLIC # 60491
CADDO PARISH, LOUISIANA
MY COMMISSION IS FOR LIFE



All interested persons are encouraged to submit written comments on the draft proposal. Comments are due no later than 4:30 p.m., August 4, 2006, and should be submitted to James Orgeron, Office of Environmental Assessment, Plan Development Section, Box 4314, Baton Rouge, LA 70821-4314 or faxed to (225) 219-3582 or by e-mail to james.orgeron@la.gov. If you have any questions regarding this document please contact James Orgeron at (225) 219-3578. Copies of this draft proposed regulation can be purchased by contacting the DEQ Public Records Center at (225) 219-3168. Check or money order is required in advance for each copy of AQ256. This draft regulation is available on the Internet at www.deq.louisiana.gov.

under Rules and Regulations.

The draft regulations are available for inspection at the following DEQ office locations from 8 a.m. until 4:30 p.m.: 602 N. Fifth Street, Baton Rouge, LA 70802; 1823 Highway 546, West Monroe, LA 71292; State Office Building, 1525 Fairfield Avenue, Shreveport, LA 71101; 1301 Gadwall Street, Lake Charles, LA 70615; 645 N. Lotus Drive, Suite C, Mandeville, LA 70471; 111 New Center Drive, Lafayette, LA 70508; 110 Barataria Street, Lockport, LA 70374.

Herman Robinson, CPM
Executive Counsel

The Times:
June 14, 2006

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The Times-Picayune

LULU/OSLO/LARD
REGULATION DEVELOPMENT SECTION

3800 HOWARD AVENUE, NEW ORLEANS, LOUISIANA 70140-1097

TELEPHONE (504) 826-3206

POTPOURRI

Department of Environmental
Quality
Office of the Secretary
Legal Affairs Division

Advanced Notice of Proposed
Rulemaking and Solicitation of
Comments on Toxic Air
Pollutant Program Revisions,
Log #AQ256 (LAC 33:III.211, 223,
551, 5101, 5105, 5107, 5109, 5111,
5112) (0606Pot)

The Louisiana Department of
Environmental Quality is
developing revisions to the Air
Toxic Rule and to the
corresponding portions of the
fee rule in LAC 33:III.211, 223,
551, and Chapter 51, Subchapter
A (AQ256). This is a preliminary
step in the rulemaking process.
Official rulemaking will be
initiated after review and
consideration of the comments
received on this advanced
notice. The concurrent review of
the ambient air standards that
was announced in the previous
potpourri notice published in the
Louisiana Register on
September 20, 2005, will be
proposed as a separate
rulemaking at a later date. The
major draft revisions include (in
no particular order):

- Elimination of obsolete rule
language and model rule
language concerning compliance
plans and certifications of
compliance;
- Removal of obsolete LDEQ
requirements;
- Clarification of area and major
source requirements;
- Utilization of applicable federal
MACT rules (40 CFR Part 63)
for state MACT (however LAC
33:III.905 will apply);
- Elimination of the exemption
for electric steam generating
units;
- Application of ambient air
standards to all sources of toxic
air pollutants (TAPs);
- Addition made to exempt
virgin fossil fuels gas streams
not containing TAPs at chemical
plants;
- Advancing the submittal of the
Toxic Emissions Data Inventory
(TEDI) to not later than March
31 of each year;
- Exemption of area sources
from submitting TEDI; and
- Revision of public notice
requirements.

All interested persons are
encouraged to submit written
comments on the draft proposal.
Comments are due no later than
4:30 p.m., August 4, 2006, and
should be submitted to James
Orgeron, Office of
Environmental Assessment,
Plan Development Section, Box
4314, Baton Rouge, LA
70821-4314 or faxed to (225)
219-3582 or by e-mail to
james.orgeron@la.gov. If you
have any questions regarding
this document please contact
James Orgeron at (225)
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DEQ Public Records Center at
(225) 219-3168. Check or money
order is required in advance for
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www.deq.louisiana.gov under
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The draft regulations are
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following DEQ office locations
from 8 a.m. until 4:30 p.m.: 602
N. Fifth Street, Baton Rouge, LA
70802; 1823 Highway 546, West
Monroe, LA 71292; State Office
Building, 1525 Fairfield Avenue,
Shreveport, LA 71101; 1301
Gadwall Street, Lake Charles,
LA 70615; 445 N. Lotus Drive,
Suite C, Mandeville, LA 70471;
111 New Center Drive,
Lafayette, LA 70508; 110
Barataria Street, Lockport, LA
70374.

Herman Robinson, CPM
Executive Counsel

State of Louisiana

Parish of Orleans

City of New Orleans

Personally appeared before me, a Notary in and for the
parish of Orleans, Robert J. Chiasson who deposes and
says that he is the Accounts Receivable Manager, of The
Times-Picayune Publishing Corporation, a Louisiana
Corporation, Publishers of The Times-Picayune, Daily and
Sunday, of general circulation; doing business in the City
of New Orleans and the State of Louisiana, and that the
attached **LEGAL NOTICE**

**Re: Potpourri Advance Notice of proposed Rulemaking &
Solicitation of comments on Toxic Air Pollutant AQ256**

Advertisement of Dept. Of Environmental Quality

P.O. BOX 4302
Baton Rouge, La. 70821-4302

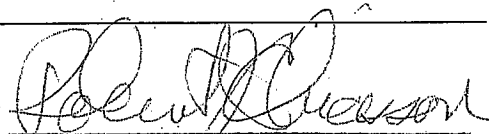
Was published in The Times Picayune

3800 Howard Ave.
New Orleans, La. 70125

On the following dates June 17, 2006

19th

Sworn to and subscribed before me this
Day of June, 2006



Notary Public

My commission expires at my death.
Charles A. Ferguson, Jr.

Notary identification number 23492

NOTICE OF INTENT

Department of Environmental Quality Office of the Secretary Legal Affairs Division

Comprehensive Toxic Air Pollutant
Emission Control Program
(LAC 33:III.221, 223, 551, 5101, 5103,
5105, 5107, 5109, 5111, and 5112)(AQ256)

Under the authority of the Environmental Quality Act, R.S. 30:2001 et seq., and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the secretary gives notice that rulemaking procedures have been initiated to amend the Air regulations, LAC 33:III.221, 223, 551, 5101, 5103, 5105, 5107, 5109, 5111, and 5112 (Log #AQ256).

The air toxics rule has been in effect for 15 years. It currently contains dated language that needs to be removed or modified. Updating the rule also addresses requests from industry to streamline the rule. This rule revises the air toxics rule in the following ways: eliminates obsolete rule language and most rule language concerning compliance plans and certifications of compliance; removes obsolete department requirements; clarifies area (minor) and major source requirements; utilizes applicable federal Maximum Achievable Control Technology (MACT) rules (40 CFR Part 63) for state MACT; eliminates the exemption for electric steam generating units; exempts virgin fossil fuels gas streams not containing TAPS at chemical plants; moves discharge reporting requirements to LAC 33:I.Chapter 39; advances the submittal of the Toxic Emissions Data Inventory (TEDI) reports to not later than March 31 of each year; exempts area (minor) sources from submitting TEDI reports; and revises public notice requirements. The basis and rationale for this Rule are to update the Louisiana Ambient Air Quality Standards to ensure continued protection of human health and the environment.

This proposed Rule meets an exception listed in R.S. 30:2019(D)(2) and R.S. 49:953(G)(3); therefore, no report regarding environmental/health benefits and social/economic costs is required. This proposed Rule has no known impact on family formation, stability, and autonomy as described in R.S. 49:972.

Title 33

ENVIRONMENTAL QUALITY

Part III. Air

Chapter 2. Rules and Regulations for the Fee System of the Air Quality Control Programs

§211. Methodology

A. Formula to Apportion Fees

Air Toxics Permits Application Fee for major sources of toxic pollutants (based on type of facility and on rated production capacity/throughput)	Surcharge of 10% of the permit application fee to be charged when there is an increase in toxic air pollutant emissions above the Minimum Emission Rates (MER) listed in LAC 33:III.5112, Table 51.1
Air Toxics Annual Emissions Fee for major sources of toxic air pollutants (based on air toxic pollutants emitted) ¹	Variable

Annual Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Variable
New Application Fee (based on type of facility and on rated production capacity/throughput)	Variable
Major and Minor Modification Modified Permit Fee (based on type of facility and on rated production capacity/throughput)	Variable
PSD Application Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 50% of the application fee when a PSD permit application is being processed
"NESHAP" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the Annual Maintenance Fee for that particular process/plant to be added to the Annual Maintenance Fee
"NSPS" Maintenance Fee (based on type of facility and on rated production capacity/throughput)	Surcharge of 25% of the permit application fee to be charged for any permit application that includes the addition of new equipment subject to NSPS regulation

¹ Fees shall be assessed on major sources as defined in LAC 33:III.5103. Sources that have reduced emissions below major source thresholds are not required to submit annual emissions reports in accordance with LAC 33:III.5107.

B. - B.13.e. ...

14. Air Toxics Annual Emissions Fees based on actual annual emissions that occurred during the previous calendar year shall be assessed on major sources as defined in LAC 33:III.5103.

15. - 15.b. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:611 (September 1988), amended by the Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1205 (December 1991), LR 18:706 (July 1992), LR 19:1419 (November 1993), amended by the Office of Management and Finance, Fiscal Services Division, LR 22:17 (January 1996), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:264 (February 2000), LR 26:2444 (November 2000), LR 29:2776 (December 2003), amended by the Office of the Secretary, Legal Affairs Division, LR 31:2435 (October 2005), LR 33:

§223. Fee Schedule Listing

Table 1. - Table 2, Note 12. ...

Note 13. Fees will be determined by aggregating and rounding (e.g., parts of a ton less than 0.50 are reported as zero and parts of a ton equal to or greater than 0.50 are reported as one ton) actual annual emissions of each class of toxic air pollutants (as delineated in the tables in LAC 33:III.5112) for a facility and applying the appropriate fee schedule for that class. If a facility emits more than 4000 tons per year of any single toxic air pollutant, fees shall be assessed on only the first 4000 tons. In no case shall the fee for this category be less than \$132.

Note 14. - Note 20. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2054, 2341, and 2351 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Nuclear Energy, Air Quality Division, LR 13:741 (December 1987), amended LR 14:613 (September 1988), LR 15:735 (September 1989), amended by the Office of Air Quality and Radiation Protection, Air Quality

Division, LR 17:1205 (December 1991), repromulgated LR 18:31 (January 1992), amended LR 18:706 (July 1992), LR 18:1256 (November 1992), LR 19:1373 (October 1993), LR 19:1420 (November 1993), LR 19:1564 (December 1993), LR 20:421 (April 1994), LR 20:1263 (November 1994), LR 21:22 (January 1995), LR 21:782 (August 1995), LR 21:942 (September 1995), repromulgated LR 21:1080 (October 1995), amended LR 21:1236 (November 1995), LR 23:1496, 1499 (November 1997), LR 23:1662 (December 1997), amended by the Office of Environmental Assessment, Environmental Planning Division, LR 26:267 (February 2000), LR 26:485 (March 2000), LR 26:1606 (August 2000), repromulgated LR 27:192 (February 2001), amended LR 29:672 (May 2003), LR 29:2042 (October 2003), LR 30:1475 (July 2004), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

Chapter 5. Permit Procedures

§551. Hazardous Air Pollutant (HAP) Control Technology Requirements for New Sources

A. - B. *Similar Source*. ...

C. Exemptions and Prohibitions. The requirements of this Section do not apply to:

1. stationary sources that are within a source category that has been deleted from the source category list in accordance with Section 112(c)(9) of the Clean Air Act; and

2. *research and development activities*, as defined in Subsection B of this Section.

D. - J. ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 24:913 (May 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

Chapter 51. Comprehensive Toxic Air Pollutant Emission Control Program

Subchapter A. Applicability, Definitions, and General Provisions

§5101. Applicability

A. The provisions of this Subchapter and LAC 33:III.905 apply to the owner or operator of any *major source*, as defined in LAC 33:III.5103, unless exempted under LAC 33:III.5105.B.

B. The provisions of LAC 33:III.905, 5105.A.1, 3, and 4, and 5113 apply to the owner or operator of any stationary source that was a major source upon promulgation of this Subchapter (as of December 20, 1991), but that has achieved minor source status through reduction of emissions and reduction of potential to emit.

C. The provisions of this Subchapter do not apply to the consumer use, in a duration and frequency intended by the manufacturer, of products obtained through retail commerce, or to activities conducted on residential property. The provisions of this Subchapter do not apply to the distribution or application of pesticides.

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:56 (January 1997), LR 24:1276 (July 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§5103. Definitions, Units, and Abbreviations

A. The terms in this Subchapter are used as defined in LAC 33:III.111 except for those terms defined herein as follows.

* * *

Source Category—a classification of sources identified by EPA pursuant to Section 112(c) of the Federal Clean Air Act.

* * *

B. - B.4. *std.* ...

AUTHORITY NOTE: Promulgated in accordance with R.S. 30:2001 and 2060 et seq.

HISTORICAL NOTE: Promulgated by the Department of Environmental Quality, Office of Air Quality and Radiation Protection, Air Quality Division, LR 17:1204 (December 1991), amended LR 18:1362 (December 1992), LR 23:57 (January 1997), LR 24:1276 (July 1998), amended by the Office of the Secretary, Legal Affairs Division, LR 33:

§5105. Prohibited Activities and Special Provisions

A. - A.1. ...

2. After December 20, 1991, no owner or operator of any major source shall cause a violation of any ambient air standard listed in LAC 33:III.5112, Table 51.2, unless operating in accordance with LAC 33:III.5109.B.

A.3. - B.1. ...

2. Each of the following emissions are exempt from the requirements of this Subchapter:

a. emissions from the combustion of Group 1 virgin fossil fuels;

b. emissions from the combustion of Group 2 virgin fossil fuels vented from a stack that has downwash minimization stack height or a height approved by the department; and

c. emissions from the combustion of gas streams not containing toxic air pollutants listed in LAC 33:III.5112, Table 51.1 or 51.3, that are generated alone or blended with other sources of virgin fossil fuels, and used as fuel.

3. Any source, as defined in accordance with rules promulgated by the United States Environmental Protection Agency under provisions in Section 112(i)(5) of the federal Clean Air Act, that is in compliance with an enforceable commitment approved by the administrative authority* to achieve early reductions of 90 percent or more (95 percent for particulates), or that has demonstrated early reductions of 90 percent or more (95 percent for particulates), in accordance with such rules, shall be exempt from MACT requirements under LAC 33:III.5109.A. The term of exemption shall extend until such time as the compliance extension granted by the administrative authority or the U.S. Environmental Protection Agency has expired, or until nine years from the anticipated date of promulgation of applicable federal MACT standards according to the schedule published by the U.S. Environmental Protection Agency in accordance with Section 112(e)(3) of the federal Clean Air Act, whichever date is earlier. Under no circumstances shall this provision be used to grant an exemption to a source under conditions that do not result in a net air quality benefit for the state of Louisiana, as determined by the administrative authority. Under no circumstances shall the granting of such an exemption to a source relieve any source of other obligations under state or federal law.